

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL J. DERME,

Plaintiff,

v.

DECISION AND ORDER
06-CV-7S

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Plaintiff is proceeding *in forma pauperis* and has filed a Motion for Appointment of Counsel in this social security case. (Docket No. 13.) Civil litigants, unlike criminal defendants, do not have a constitutional right to the appointment of counsel. In fact, this Court cannot actually “appoint” counsel for a plaintiff proceeding *in forma pauperis*. Rather, this Court may only *request* that a volunteer attorney review and accept a plaintiff’s case. 28 U.S.C. § 1915(e)(1) (providing that a court “may request an attorney to represent any person unable to afford counsel”). If no attorney agrees to accept the case, this Court is powerless to do anything more. See Mallard v. United States Dist. Court, 490 U.S. 296, 310, 109 S.Ct. 1814, 1823, 104 L.Ed.2d 318 (1989) (holding that 28 U.S.C. § 1915 “does not authorize the federal courts to make coercive appointments of counsel”).

This Court has reviewed the pending dispositive motions filed in this case, as well as Plaintiff’s instant Motion for Appointment of Counsel. Considering the relevant factors set forth in Hodge v. Police Officers, this Court finds no cause at this time to request that a volunteer attorney accept this case. 802 F.2d 58, 60-62 (2d Cir. 1986) (setting forth factors relevant to determining whether counsel should be appointed, including consideration of the merits of the case as a “threshold matter”). Accordingly, this Court will

deny Plaintiff's Motion for Appointment of Counsel without prejudice.

IT HEREBY IS ORDERED, that Plaintiff's Motion for Appointment of Counsel
(Docket No. 13) is DENIED without prejudice.

SO ORDERED.

Dated: October 26, 2006
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge